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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,627	12/06/2001	Wilhelmus Everhardus Hennink	313632000501	1202

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EXAMINER	
WEBMAN, EDWARD J	
ART UNIT	PAPER NUMBER

1617

DATE MAILED: 08/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	10/020627	Applicant(s)	H GATNIK
Examiner	WEBMAN	Group Art Unit	16.17

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- Responsive to communication(s) filed on 6/14/02
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- Claim(s) 9-37 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- Claim(s) _____ is/are allowed.
- Claim(s) 9-37 is/are rejected.
- Claim(s) _____ is/are objected to.
- Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on _____ is approved disapproved.
- The drawing(s) filed on _____ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All Some* None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) _____.
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s). 3
- Notice of Reference(s) Cited, PTO-892
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Interview Summary, PTO-413
- Notice of Informal Patent Application, PTO-152
- Other _____

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Claims 9-37 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a crosslinked IPN wherein one ~~acry~~^{pol}mer is a polyhydroxy alkyl acrylate and the spacer is a poly(hydrox^y carboxylic acid), does not reasonably provide enablement for any hydrolysable spacer and any two polymers. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to making the invention commensurate in scope with these claims. On page 8 line ¹⁰ ~~8~~-page 9 line 23 applicants disclose a hydroxyalkyl acrylate terminated spacer of poly (hydroxy carboxylic acid) pre polymer bound to a first polymer (dextran) followed by polymerization of the acrylate to make the second polymer. The making of no other second polymer and no other hydrolysable spacer is described.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 9-37 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-31 of copending Application No. 09/214,306. Although the conflicting claims are not identical,

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they are not patentably distinct from each other because the instant claims encompass those of '306.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

No claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Webman whose telephone number is (703) 308-4432. The examiner can normally be reached on Monday to Friday 9 Am 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie can be reached on (703) 308-0570. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3592 for regular communications and (703) 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Webman/LR
July 30, 2002

EDWARD J. WEBMAN
PRIMARY EXAMINER
GROUP 1500